

IN THE COURT OF APPEALS OF IOWA

No. 1-588 / 11-0907
Filed August 10, 2011

**IN THE INTEREST OF P.M.A.O.,
Minor Child,**

**E.C.C., Mother,
Appellant.**

Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Associate Juvenile Judge.

A mother appeals the termination of her parental rights to her child.

AFFIRMED.

Molly Vakulskas Joly of Vakulskas Law Firm, P.C., Sioux City, for appellant.

Thomas J. Miller, Attorney General and Charles K. Phillips, Assistant Attorney General, for appellee.

Stephanie Forker Parry, Sioux City, attorney and guardian ad litem for minor child.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

A mother struggling to overcome her methamphetamine addiction seeks reversal of the juvenile court order terminating her parental rights to her two-year-old daughter. On appeal she alleges the proof presented at the hearing did not meet the statutory grounds for termination; that it is against the child's best interests to sever the bond with her mother; and the Iowa Department of Human Services (DHS) failed to provide services that she requested to help achieve reunification with her child.

Given the mother's pattern of relapsing, we find that the child cannot be safely returned to her custody within a reasonable amount of time. The record reveals a close tie between mother and daughter. But unfortunately, because of her mental health and substance abuse issues, the mother has not attained the necessary stability to provide full-time parenting, despite treatment facilitated by the DHS. In the interest of finding a permanent placement for P.M.A.O., we affirm the juvenile court.

I. Background Facts and Proceedings

The mother, Elise, has battled mental illness and substance abuse since childhood. She has been diagnosed with bipolar, schizoaffective, and borderline personality disorders.¹ As a teenager, she was adjudicated as a child in need of assistance (CINA) herself due to drug abuse and psychiatric issues. Elise also had her parental rights to two older children terminated in July 2006. Elise experienced postpartum depression after giving birth to her older children; their

¹ Elise takes medication for the bipolar disorder, but questions whether the other diagnoses are accurate.

removal and adjudication as CINA was sparked by the mother's expressed thoughts of harming one of her children.

Because of the earlier terminations, the DHS expressed concern for P.M.A.O.'s safety from the time of her birth in January 2009. Social workers removed P.M.A.O. from her mother's care before the baby left the hospital. Elise made progress early in the case and the DHS reunited P.M.A.O. with Elise in March 2009. In December 2009 Elise reported to a DHS worker that she had been sexually assaulted and, as a result, relapsed into consuming alcohol. The DHS did not remove P.M.A.O. at that time, but did recommend Elise obtain counseling and services to deal with her stress. Elise continued to see her individual counselor, but did not seek specific help from the local council on sexual assault as recommended by the DHS case worker.

In July 2010, Elise tested positive for methamphetamine and P.M.A.O. was removed from her care. Elise attributes this relapse to her mother's death in May 2010. The DHS tried to continue Elise's supervised visits with P.M.A.O. that summer, but Elise did not show up. Elise then sought in-patient substance abuse treatment at the Women and Children's Center.

The Woodbury County Attorney filed a petition seeking to terminate the mother's parental rights on August 16, 2010. On September 16, 2010, the county attorney's office filed a notice of its disagreement with the DHS recommendation for returning the child to her mother's care. The notice asserted that the welfare of the child was "not best served by continuing to subject her to Mother's ongoing issues of mental health and substance abuse." The DHS case

supervisor requested that the department be represented by the Iowa Attorney General's Office. An assistant attorney general entered an appearance and moved to dismiss the termination petition. The juvenile court dismissed that petition in November 2009.

Meanwhile, P.M.A.O. was returned to Elise, who successfully completed treatment at the Women and Children's Center and followed the program's recommendation to enter a YWCA halfway house in Fort Dodge in October 2010. In December 2010, Elise took advantage of a holiday furlough from the halfway house to visit her father, Tommy, in Sioux City. At that time, Elise had another relapse into methamphetamine use, leaving P.M.A.O. with Tommy and disappearing for several days. The DHS placed P.M.A.O. in foster care in January 2011. After unsuccessfully trying to reenter an in-patient treatment program, Elise moved in with her father Tommy in March 2011.

On March 4, 2011, the Attorney General filed a petition to terminate Elise's parental rights. The district court held a hearing on May 24, 2011, at which Elise asked for six more months to regain custody of her daughter. At the time of the hearing, Elise was unemployed, on probation for credit card fraud, and had been drug free for only thirty-one days. The juvenile court entered an order terminating parental rights on May 31, 2011.² Elise now appeals.

II. Scope and Standard of Review

We review termination orders de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010) ("Although the court has to use its best judgment in applying the

² The juvenile court also terminated the parental rights of P.M.A.O.'s putative father. He did not appear at the hearing and does not appeal.

factors contained in the statute, this does not mean we review its decision for an abuse of discretion.”). We are not bound by the juvenile court’s findings of fact, but we accord them weight, especially in assessing witness credibility. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). We will uphold an order terminating parental rights if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is considered “clear and convincing” when there are no “serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.” *Id.*

III. Analysis

A. Statutory Ground for Termination

The juvenile court terminated Elise’s parental rights based on Iowa Code sections 232.116(1) (d), (g) and (l) (2009). On appeal, Elise contends the State failed to meet its burden to prove that her rights should be terminated under those subsections. We only need to find grounds to terminate parental rights under one of the sections cited by the juvenile court to affirm its ruling. *In re R.K.*, 649 N.W.2d 18, 19 (Iowa Ct. App. 2002).

In Elise’s case, the State’s most compelling evidence involved her severe and chronic substance abuse problem. Under the juvenile code, a court may terminate parental rights if all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child’s parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent’s prognosis indicates that the child will not be able to be returned to

the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

Iowa Code § 232.116(1)(f).

Elise contests the State's proof that her daughter could not be returned to her custody in a reasonable period of time. She asserts that she can resume caring for P.M.A.O. in two to three months when she enters the Sanctuary Apartments, a long-term recovery community in Sioux City. The record does not support such an optimistic time frame. The mother's own exhibit from Jackson Recovery Center offered at the termination hearing noted that as of May 19, 2011, Elise was waiting for a bed to open at the Marianne Manor halfway house. The therapist anticipated Elise would spend up to six months in that environment and then she could apply to move into Sanctuary Apartments.

Considering P.M.A.O.'s tender age and her need for permanency, we do not see waiting for her mother to launch another effort to recover from her addiction to be a viable option for the child. Although a therapist from the Jackson Recovery Center highlighted Elise's treatment progress in a mid-May 2011 report, Elise is unable to demonstrate the long-term stability and resiliency necessary to ensure P.M.A.O. a safe and nurturing home any time soon. Elise used methamphetamine after the State filed its second petition for termination of rights involving P.M.A.O.; she had only been drug free for about a month before the hearing. Elise relapsed into substance abuse at least three times during the course of this case. Elise blamed deep grief following the death of her mother for her July 2010 setback. But she did not have a good explanation for resorting to methamphetamine use in 2011: "I just did. It's the only comforting thing I knew

how to deal with life.” We are concerned that Elise has not been able to develop healthy coping mechanisms despite years of services.

The child’s guardian ad litem aptly summed up Elise’s situation:

[B]oth prior to [P.M.A.O.’s] birth and throughout the last two and a half years, there’s been a real struggle with mental health and substance abuse and [the file] doesn’t prove that it’s changed much. We’re back where we started more than two years ago.

In parental termination cases, “[w]hat’s past is prologue.”³ Evidence of a parent’s history “may be indicative of the quality of future care that parent is capable of providing.” *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981). Elise’s pattern of relapsing into substance abuse signals a future fraught with risk for her child. The State presented clear and convincing evidence that P.M.A.O. cannot be safely returned to her mother’s custody within a reasonable amount of time given the child’s age and need for a permanent home.

B. Reasonable Efforts

Elise claims the DHS did not make reasonable efforts to provide services to reunify her family. Elise testified that she asked her case worker for a referral to “drug court” after her December 2010 relapse and inquired whether other services were available for her and P.M.A.O. The case worker recalled Elise’s inquiry, but considered it too late in the progression of the case to recommend Elise for family treatment court or other services. By that point, Elise had been receiving services from the DHS for more than two years; plus she was provided services during the termination case involving her two older children.

³ William Shakespeare, *The Tempest*, at act II, scene I, lines 253-54 (suggesting the past sets the stage for future actions).

The reasonable efforts requirement is not viewed as a strict substantive requirement of termination. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). Instead, the State must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the parent's care. *Id.* We find that the State met its burden in the instant case. Elise's request for treatment court or other unnamed services was "due far earlier in the process." See *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993). In our view, the DHS exerted more than adequate efforts to reunite Elise with her child, even advocating for an in-patient treatment program that allowed the mother to have custody of her daughter when the county attorney had already filed a petition to terminate her parental rights.

C. *Best Interests of the Child*

Elise next argues the juvenile court erred in finding that termination was in P.M.A.O.'s best interests. The best-interest test is limited to the considerations contained in section 232.116(2). *P.L.*, 778 N.W.2d at 39. That section provides:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child.

Iowa Code § 232.116(2).

Further, under section 232.116(3)(c), the juvenile court has discretion not to terminate parental rights if there is clear and convincing evidence the termination would be detrimental to the child due to the closeness of the parent-child relationship.

In arguing for preservation of the parent-child relationship, Elise points to P.M.A.O.'s strong attachment to her as displayed through the child's emotional outbursts when their visits end. We agree that the record shows a strong bond between mother and daughter. But the child's best interests are measured by more than her immediate, visceral reaction to separation from a parent. Neither the child's safety nor her long-term nurturing and growth are advanced by merely hoping that the mother can rise above her substance abuse and mental illness to be an effective parent. See *In re K.M.*, 653 N.W.2d 602, 606 (Iowa 2002) (noting child was bonded with parents but finding stability presented by termination was in her best interests). P.M.A.O. is adoptable and reportedly is doing well with her foster family. We agree with the juvenile court's decision to terminate her mother's parental rights as a first step toward a permanent placement.

AFFIRMED.